

BUILDING NEAR WETLANDS The Basic Facts



Before You Buy . . . Before You Build . . . Get a Permit

Are you buying undeveloped land? Building a home, a retail center or marina? In each case, the presence of wetlands may affect where and whether you build, buy or develop. In Puerto Rico, and throughout the United States, wetlands on public and private property are protected by the law. You must obtain a permit from the U.S. Army Corps of Engineers and Commonwealth agencies before building on or filling wetlands.

Why Protect Wetlands?

Wetlands are vital natural areas where water has saturated the soil and created an ecosystem of plants and animals. Seventy-five percent of Puerto Rico's wetlands have been lost. An estimated 23,000 acres of coastal wetlands remain. The island's wetlands include mangrove swamps, *Pterocarpus* forests, marshes and salt flats. You may have grown up thinking of wetlands as "swamps" best drained for agriculture or filled for development. But wetlands contribute positively to the social, economic and environmental health of Puerto Rico in many ways:

- ▶ they filter pollutants, nutrients and sediments to protect water quality in the ocean, lakes, rivers, streams and in drinking water wells;
- ▶ they store runoff from heavy rains, reducing flood damage;
- ▶ they act as shoreline buffers protecting homes and property from erosion;
- ▶ they provide essential habitat for fish, waterfowl and other animals, creating recreational opportunities for residents and visitors and contributing to local economies;
- ▶ they support the food chain on which wildlife, fisheries and shell fisheries depend. These are essential to local economies; and

- ▶ they provide beautiful open spaces, enhancing Puerto Ricans' quality of life, private property values and tourism.

Many of these values were not widely appreciated until the 1970's and 80's. By then, more than half of the nation's marshes, swamps and salt flats were gone. The need to stop wetland loss was critical and immediate. Local, state, Commonwealth and federal governments responded by regulating them.

Where Do I Go From Here?

Read this brochure to learn how wetlands are regulated and about the steps you should take to ensure that the law is on your side.

What's Inside

Project Planning Checklist
The essential steps

Guide to Wetland Laws
Regulations, Agencies, & Programs

Contacts List
An Agency Directory

PROJECT PLANNING CHECKLIST

BUYING AND BUILDING WITH CARE

Since any alterations to wetlands are subject to Commonwealth and federal regulations, you should attempt, in the initial planning stage of your project, to avoid impacting wetlands. Filling wetlands without a permit may result in enforcement actions that can cost time and money. In the planning stage, contact the U.S. Army Corps of Engineers Antilles Regulatory Office (Corps), the Caribbean offices of the Environmental Protection Agency (EPA) and the U.S. Fish and Wildlife Service, the Puerto Rico Department of Natural and Environmental Resources (DNER), the Environmental Quality Board (EQB), the Planning Board (PRPB) and, if on agricultural land, the Natural Resources Conservation Service to determine what permits you may need. The contact list at the end of this guide provides pertinent addresses and telephone numbers.

1.

Get to Know the Property

Wetlands protection and zoning regulations will play a major role in determining the scope and design of your project. Get to know your property and determine whether any wetlands exist before making design decisions. You can do this by:

- gathering relevant documents, including property descriptions, topographic maps, aerial photographs, zoning maps, floodplain maps, U.S. Fish and Wildlife Service National Wetlands Inventory (NWI) maps [see USFWS contact info at end of guide] and soil survey maps;
- if these sources indicate that wetlands may be present, obtaining a definitive determination by asking a qualified wetlands consultant or staff from the U.S. Army Corps of Engineers to visit the property. If necessary, have the consultant or Corps staff conduct a complete wetlands delineation of the property, and get that verified by the Corps in writing.



2.

Learn the Basics About Wetland Regulations

Keep in mind that programs at two levels of government – Commonwealth and federal – may regulate your proposed activities in wetlands. See the *Guide to Wetland Protection Laws* that follows this checklist.

- Ask the agencies listed above to help determine which regulations apply to your project.
- Review the regulations carefully. Remember that Commonwealth regulations may differ from federal regulations.
- Evaluate your project to determine whether it involves permitted, conditional or prohibited activities under Commonwealth and federal regulations.
- Confirm your conclusions with Commonwealth and federal agencies, especially the Corps of Engineers. A pre-application conference with these agencies is recommended and can be arranged by contacting the Corps. See the contacts list at the end of this guide.
- If the land is farmed or has been farmed in the past, contact the Natural Resources Conservation Service. The land may be a converted wetland, a farmed wetland, a prior converted wetland or an abandoned converted wetland. Certain federal regulations are applicable to farmed wetlands, depending on the farming history.

3.

Modify Your Project Design Or Location If Necessary

If you determine that the current design for your project will impact wetlands, you may want to consider revising the project to avoid wetlands.

- Look for design alternatives that avoid wetlands. Minimize the project scope and its adverse impacts on wetlands.
- If the project design can't be altered to comply with applicable regulations, try to change the location or investigate an alternative use for the property.

4.

Complete Permit Applications

If you still believe that you need to fill wetlands, you must apply for a permit. Federal and Commonwealth agencies have developed a joint application process, which is discussed below. Remember, building without a permit may result in enforcement actions by Commonwealth and/or federal authorities who may impose fines and require compensation. In fact, if you are found to have filled wetlands in Puerto Rico without a permit, you may be required to create new wetlands - the amount lost, or even more - and may be subject to a monetary fine. These are potentially significant costs.



Joint Permit Application Process

A single application form has been developed for use by all agencies involved in the joint application process. The U.S. Army Corps, the DNER and the PR Planning Board have coordinated on the *Federal and Commonwealth Joint Permit Application For Water Resource Alterations in Waters, Including Wetlands, Of Puerto Rico*. To receive an application form, contact the Corps Antilles office. By

using the joint application form, you can apply for the following permits needed for projects that affect wetlands:

- Placement of fill in waters of the U.S. under Section 404 of the Clean Water Act - **Corps**
- Work in navigable waters of the U.S. under Section 10 of the Rivers and Harbors Act – **Corps**
- Certificate of Consistency with the Puerto Rico Coastal Zone Management Plan - **PRPB**
- Section 401 Water Quality Certificate - **EQB**
- Submerged Land Use Concession - **DNER**
- Earth Crust Extraction Formal Permit - **DNER**
- Well and Water Intake Construction - **DNER**

PERMIT REVIEW TIMETABLE

FEDERAL

Wetland permit applications that qualify for a nationwide permit for specific minor activities in wetlands, determined by the Corps, are concluded in less than 45 days. Other permit applications may take longer. The individual permit review and decision process entails the following:

- Optional pre-applications consultation
- Applicant submits individual permit application
- Army Corps of Engineers receives application and assigns an identification number
- Public Notice is issued within 15 days of receipt of a complete application

- Corps receives public comment for 15-30 days
- Proposal is reviewed by the Corps and
 - the public
 - Commonwealth agencies
 - federal agencies
 - special interest groups
- Corps considers all comments
- Other federal agencies are consulted if appropriate
- Corps may ask the applicant to provide additional information
- Public hearing held if needed – this may lengthen the decision process
- Corps makes decision
 - Permit issued or denied
 - If denied, applicant is told why
- If a controversial action is proposed or an Environmental Impact Statement is required, the permit process may extend to several months or more.

If EPA, the U.S. Fish and Wildlife Service, or the National Marine Fisheries Service conclude that the

Corps has not adequately addressed their concerns, they may request further review and the permit decision may be delayed by 30 to 60 days. If EPA decides to exercise its authority to deny or restrict a proposed project in wetlands, the Corps cannot issue a permit. The denial process involves public participation and possibly hearings, and could take up to 6 months.

COMMONWEALTH

Within two days of receipt of the joint application, the DNER will provide each Commonwealth agency involved in wetland decisions with copies of the application. Within 20 days of submitting the application, the applicant will receive notification, in the form of a completeness/ incompleteness letter, from each applicable agency. The Commonwealth's review of permit applications takes place concurrent to the federal review.

GUIDE TO WETLAND PROTECTION LAWS

FEDERAL WETLAND PROTECTION

U.S. Army Corps of Engineers (Corps):

The Corps of Engineers has jurisdiction over activities in waters of the United States, including wetlands, under the following legislation:

Clean Water Act (CWA) - Section 404

This section of the Clean Water Act regulates discharges to waters of the United States, including filling, soil movement and the placement of certain pilings in wetlands, and establishes a permit program to ensure that such discharges comply with environmental requirements. Discharges of dredged or fill material are regulated for all waters and wetlands regardless of size. Pre-approved general or nationwide permits may be available for specific minor activities in wetlands. Compensatory mitigation involving the creation of new wetlands for those lost is only accepted for unavoidable losses. The Corps administers the federal permit program.

Section 10 of the Rivers and Harbors Act

This section regulates any activity that affects the course location and capacity of a navigable water. It regulates all activities that take place in, on, above or underneath navigable waters. Each Corps district maintains a list of navigable waters regulated under Section 10.





U.S. Environmental Protection Agency (EPA)

EPA developed the environmental guidelines by which wetland permit applications must be evaluated. The Agency reviews proposed permits, may prohibit discharges with unacceptable adverse impacts, establishes the jurisdictional scope of waters of the United States and interprets CWA Section 404 exemptions. EPA and the Corps share enforcement authority when wetlands are filled without a permit, or in violation of permit.

Natural Resources Conservation Service (NRCS)

NRCS administers the Farm Security and Rural Investment Act of 2002, which includes the Farm Bill. The Farm Bill's 2002 revisions include programs related to the conservation of wetlands on agricultural land. The NRCS conducts wetland inventories and makes wetland determinations.

U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS)

The Fish and Wildlife Coordination Act and the Reorganization Plan No. 4 of 1970 require the Corps to consult with the USFWS, the National Marine Fisheries Service and the Puerto Rico Department of Natural Resources before issuing wetlands permits and mitigation plans. This is to ensure that no threatened or endangered wildlife will be harmed by the project.

COMMONWEALTH WETLAND PROTECTION

Department of Natural and Environmental Resources

Submerged Land Use Concession

Through Act No. 23, June 20, 1972, known as the Organic Act, the Legislative Assembly conferred responsibility to the DNER to implement the Regulation for the Use, Surveillance, Conservation and Management of Territorial Waters, Submerged Lands Thereunder and the Maritime Zone. The regulation is designed to impede or significantly reduce damage to natural systems, particularly in Natural Reserve areas, and to promote conservation and preservation. Under the act, any activity which generates profit or is hazardous to human health, property or the environment, must first be authorized by DNER. A January 14, 2000 amendment to the Organic Act granted the Secretary of the DNER the authority to regulate the protection, management and conservation of Puerto Rico's wetlands.

Earth Crust Extraction

The Secretary of the DNER is authorized to grant permits for extraction of earth crust materials. Projects are evaluated based on, among other things, their possible impacts to natural resources.

Water Franchises, Well Construction and Water Intake Construction

In accordance with the Law for the Conservation, Development and Use of Water Resources, Act 136, June 3, 1976 and the Organic Law, the Secretary of the DNER has authority to grant permits for the construction of wells within the river basin and water intakes in rivers or streams. All bodies of waters in Puerto Rico are public domain. Their use and development are subject to the law.

Environmental Quality Board

Water Quality Certification

As a condition for approval for a federal wetlands permit, Section 401 of the federal Clean Water Act requires certification that the proposed permit meets Commonwealth water quality standards. Water quality certifications are given by the Environmental Quality Board.

Planning Board

Coastal Zone Management Consistency (CZM)

The Coastal Zone Management Act of 1972 was enacted to develop a national program to manage and balance competing uses of and impacts to coastal resources. Under the Act, activities requiring federal permits must be consistent with a

state's or Commonwealth's approved Coastal Management Program. A notice of CZM consistency or a waiver of such notice is required for all wetlands actions. In Puerto Rico, this notice or waiver is issued by the Planning Board.

G L O S S A R Y

Clean Water Act:

The primary goal of the Clean Water Act is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. Section 404 is specifically directed toward regulating discharges of dredged or fill material into waters of the United States, including wetlands.

Mitigation:

Mitigation refers to the avoidance and minimization of detrimental impacts and compensation for the loss of wetlands and their function. It is required in the Corps permit process if alternative siting and efforts to reduce impacts still result in wetland loss.

National Wetlands Inventory Maps (NWI):

NWI maps show the location and type of wetlands in the United States, Puerto Rico and the Virgin Islands. NWI maps are not a substitute for federal wetland delineation and jurisdiction. NWI mapping has been undertaken with the use of aerial photo technology, and not all mappings have been confirmed by site visits. The NWI maps can be overlaid upon U.S. Geological Survey topographic maps. To purchase NWI maps contact the Earth Science Information Office at (413) 545-0359 or <http://www.umass.edu/tei/esio> (scroll to Puerto Rico) To purchase USGS topographic maps call 888-ASK-USGS or order on-line at <http://mcmcweb.er.usgs.gov/topomaps/index.html> To view USGS maps on-line visit <http://mapping.usgs.gov/partners/viewonline.html>

Navigable Waters (federal):

All presently, historically, and reasonably potential navigable waters and all waters subject to the ebb and flow of the tide up to mean high water in tidal water and up to ordinary high water in freshwater areas.

Ordinary High Water Mark (OHWM) (federal):

The point on the bank or shore to which the presence and action of surface water is so continuous as to leave a distinct mark by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation or other easily recognized characteristic. The OHWM defines the bed of a lake, river or stream.

Wetlands (federal):

Those areas that are inundated or saturated by surface or ground water at a frequency and duration to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include swamps, bogs, marshes and wet meadows.

Wetlands Reserve Program:

A voluntary program authorized through the 2002 Farm Bill, offering landowners a chance to receive payments for restoring and protecting wetlands on their farms.

C O N T A C T S L I S T

Army Corps of Engineers

Antilles Regulatory Office

400 Fernández Juncos Avenue
Stop 7 ½ Antilles Office
San Juan, Puerto Rico 00901-3299
(787) 729-6905 or (787) 729-6944

Vivian.Gerena@saj02.usace.army.mil (acting chief)
<http://www.saj.usace.army.mil/permit/index.html>
http://www.saj.usace.army.mil/permit/offices/antilles_permits/antilles.htm

U.S. Environmental Protection Agency Region 2, Caribbean Environmental Protection Division

Centro Europa Building, Suite 417
1492 Ponce de Leon Avenue
Santurce, Puerto Rico 00907-4127
Mr. José Soto (787) 977-5829
Soto.Jose@epa.gov

Puerto Rico Department of Natural and Environmental Resources

Munoz Rivera Avenue, Pda 3-1/2
Pta. De Tierra Station
P.O. Box 9066600
San Juan, Puerto Rico 00906-6600
(787) 724-8774 extension 2069
<http://www.drna.gobierno.pr/>

Puerto Rico Environmental Quality Board

Water Quality Area
431 Ponce de Leon Avenue
Hato Rey, Puerto Rico 00917
(787) 767-8181, extensions 2523 or 3523

Puerto Rico Planning Board

Federal Consistency Procedures
Land Use Planning Bureau
P.O. Box 41119
Santurce, Puerto Rico 00940-1119
(787) 726-0289 or (787) 723-6200 extensions 2020 or 2011

Natural Resources Conservation Service

U.S. Department of Agriculture
Caribbean Area
P.O. Box 364868
San Juan, Puerto Rico 00936-4868
(787) 766-5206
Location Address: IBM Plaza
654 Munoz Rivera Plaza
Hato Rey, Puerto Rico 00918-4123
juan.martinez@pr.usda.gov
<http://www.pr.nrcs.usda.gov/contact/>

U.S. Fish and Wildlife Service

Boquerón Ecological Services Field Office
P.O. Box 491
Boquerón, Puerto Rico 00622-0491
(787) 851-7297 FAX (787) 851-7440
Location Address: Carr 301, Km 5.1, Bo Corozo,
Boqueron, Puerto Rico 00622-0510
FW4_ES_Boqueron@fws.gov
<http://caribbean-ecoteam.fws.gov/>
<http://southeast.fws.gov/pubs/facts/bescon.pdf>

Rio Grande Ecological Services Field Office
P.O. Box 1600
Rio Grande, Puerto Rico 00745-1600
(787) 887-8769
FAX: (787) 887-7512
Location Address: Edificio Suarez,
Calle Garcia de la Noceda, Local No. 38
Rio Grande, Puerto Rico 00745-2832
<http://southeast.fws.gov/pubs/facts/rioescon.pdf>

